

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
DISCIPLINARY PROCEEDINGS AGAINST

Theodore J. Heun
RESPONDENT.

FINAL DECISION AND ORDER
DOE # 87 Pharm 18,

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Theodore J. Heun
5666 North Green Bay Road
Glendale, WI 53217

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Theodore J. Heun, is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license # 9457.
2. The Respondent did, on August 2, 1985, violate s. 450.11(5), Wis. Stats., in that he renewed a prescription (#244082) for Kelfex for patient Sue Domino, without authorization from a prescriber and contrary to the designation on the prescription order. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

CONCLUSIONS OF LAW

1. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to sec. 450.10(1), Wis. Stats.

2. The Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Theodore J. Heun is reprimanded by the Board for his unprofessional conduct.

IT IS FURTHER ORDERED, that the attached Stipulation between the Respondent and the Wisconsin Department of Justice is approved by the Board, and the Respondent shall comply with all of its provisions forthwith.

Dated this 9th day of April, 1991.

WISCONSIN PHARMACY EXAMINING BOARD

by: Don Reynolds RPh
Chairman

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

Theodore J. Heun
Respondent.

:
:
:

STIPULATION

87 Pharm 8

It is hereby stipulated between the above Respondent, personally on his own behalf and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has been provided the opportunity to seek legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent admits the facts set forth in the Findings of Fact, and further agrees that the Board may reach the conclusions set forth in the Conclusions of Law, and may enter the Order.


6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

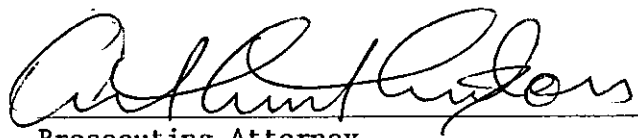
8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent understands that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation shall be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.


Respondent

2/20/91
Date


Prosecuting Attorney
Division of Enforcement

2/22/91
Date



Norwest Bank Wisconsin
3315 West Villard Avenue
Milwaukee, Wisconsin 53209

Official

Check 416438208
LOCATION ID 794

10-86
220

Remitter

CRESTWOOD PHARMACY INC

Date

FEBRUARY 21, 1991

Pay

*****\$1,655.00*****

\$ **1,655.00

To the
Order of

* WISCONSIN DEPARTMENT OF
JUSTICE

TO CITIBANK (NEW YORK STATE), BUFFALO, NY

Drawer: Norwest Banks

Debra Schaefer
Authorized Signature

⑆022000868⑆ 8⑈513187 416438208

From Theodore Heun
From Theodore Heun

MAY 15 1987

SETTLEMENT AGREEMENT

WHEREAS Crestwood Pharmacy, Inc., is a ~~certified~~ provider, No. E26002787, of pharmacy services for the State of Wisconsin Medical Assistance Program, hereafter Medicaid, and

WHEREAS a joint investigation by the State of Wisconsin through its Surveillance and Utilization Review Unit of the Department of Health and Social Services and the Medicaid Fraud Control Unit of the Department of Justice disclosed that Crestwood had engaged in improper billing practices in its Medicaid reimbursed pharmacy services, and

WHEREAS these improper practices have been specifically called to the attention of Mr. Theodore Heun, president of Crestwood Pharmacy, Inc., informing him that 1) claims had been filed for specific brand name drugs stating the prescription stated "no substitution" when in fact no such statement was made and generics could have and should have been provided; 2) refills of prescriptions had been made where no authorization from the prescribing physician could be substantiated, and 3) on occasion prescriptions were filled when in fact no authorization for refill from the prescriber was possible, and

WHEREAS the requirements of the Wisconsin Medical Assistance Program have been thoroughly reviewed with Mr. Heun, and

WHEREAS the parties to this agreement desire to settle all of their claims amicably and without litigation

NOW THEREFORE hereby stipulate and agree as follows:

Theodore Heun on behalf of himself and as chief executive officer of Crestwood Pharmacy, Inc., and on its behalf hereby agrees

1. To pay to the State of Wisconsin the sum of Four Thousand Four Dollars and Twenty-seven Cents (\$4004.27) as and for overpayments received from the Wisconsin Medical Assistance Program through improper billing practices engaged in by Crestwood Pharmacy, Inc.

2. To pay to the State of Wisconsin the sum of One Thousand Nine Hundred Ninety-five Dollars and Seventy-three Cents (\$1,995.73) as and for a forfeiture for knowingly making one false statement of material fact in an application for a payment and Five Hundred Dollars (\$500.00) as and for a forfeiture for knowingly making a false statement of material fact on each of eight other applications for payment from the Wisconsin Medical Assistance Program all as provided by sec. 49.49(4m), Stats.

3. The aforesaid payments, totaling the sum of Ten Thousand Dollars (\$10,000) shall be made in ten monthly payments of One Thousand Dollars (\$1,000) each with the first such payment to be delivered with the acceptance and execution of this agreement.

4. The aforesaid obligation shall be joint and several as to Mr. Theodore Heun and Crestwood Pharmacy, Inc.

5. To refrain from future violations of sec. 49.49, Stats., conforming all billing practices to the requirements and limitations imposed by the Wisconsin Medical Assistance Program on pharmacy services providers.

In consideration for the foregoing agreement by Theodore Heun and Crestwood Pharmacy, Inc., the State of Wisconsin hereby agrees

A. To accept the above-stated sums as payment in full

for all money claims the State of Wisconsin may have against Mr. Theodore Heun or Crestwood Pharmacy, Inc., by reason of any overpayment of monies due from Medicaid or any payments made for improper claims or for any fines or forfeitures which could be claimed for or resulting from any improper claim submitted by Theodore Heun or Crestwood Pharmacy, Inc., on or before May 3, 1986, and

B. FURTHER AGREES not to commence any action, criminal or civil, based upon, related to or as a consequence of Mr. Heun's or Crestwood Pharmacy, Inc.'s services or goods or claims therefore provided to Wisconsin Medicaid recipients on or before May 3, 1986, except any action necessitated by the failure of Mr. Heun and/or Crestwood Pharmacy, Inc., to pay the sum of Ten Thousand Dollars (\$10,000) as agreed to above in paragraphs numbered 1, 2, 3 and 4.

WHEREFORE the parties to this agreement in settlement of all Medicaid claims of the State of Wisconsin against Theodore Heun and Crestwood Pharmacy, Inc., have hereunto placed their hands and seals.

Theodore Heun
Theodore Heun
In proper person

Witnessed this 4/29/87
day of April, 1987.

CRESTWOOD PHARMACY, INC.

by Theodore Heun
Theodore Heun, President

Nancy Heun
Secretary

by Beverly Heun

THE STATE OF WISCONSIN

by Robert B. McConnell Sr.
Robert B. McConnell Sr.
Assistant Attorney General

Witnessed by:

Maureen Thoney

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each and the identification
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is April 15, 1991.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (c). (No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.